

Features of application of norms of a common law in Turkestani edge at the end of the XIX century – the beginning of the XX century

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Abstract: This richly detailed study traces the shared history of Russia and Turkestan in the period of the end of the XIX century – the beginning of the XX century. An aggressive and colonizer policy from the Russian Empire in the XIX century led to the creation of Turkestani edge. The author considers the special model of court system on Turkestani territory under the Russian Empire power. This system was created by judicial authority of the imperial Russia as a combination of two systems - biev court and kaziev court. These courts were based on Sharia and a traditional common law of steppe democracy.

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Introduction

After obtaining independence of our state we had an opportunity objectively to estimate own history. Is well-known that fact that at the Soviet era had process of conscious distortion of the state and national identity of our people. These mistakes made during this era times, are investigated now again according to historical reality. In the history of the state and the right of Kazakhstan there are enough the problems damaging research and deep studying. One of these questions is studying of features of application of norm of a common law in the Turkestani region at the end of the XIX century – the beginning of the XX century.

The Turkestani edge has centuries – old history. This edge during the continuous period turned into a home for many nationalities and ethnoses. Not for nothing Turkestan call the country of the Turkic people which united the different ethnoses living in Central Asia. Presently nationalities and ethnoses occupying Turkestani edge and the independent states having once live in peace. Especially it is visible on the example of our state – the Republic of Kazakhstan.

Being the gold bridge between Asia and Europe [1, pp. 45–47], the Turkestani edge was in political and economic life extremely we mean. For this reason concerning Turkestan always took place of attempt of a gain from the great states. As a result of aggressive and colonizer policy from the Russian Empire the Turkestani edge was created.

The end of XIX – the beginning of the XX centuries – is the period when the colonizer policy of imperial Russia dominated everywhere [2]. We will note that in the Turkestani region the Russian Empire

edge the colonizer policy at once with destruction of ancient traditions, customs, laws and government institutions of the nomadic states. It was reflected in all spheres of activity of society. Mechanisms of the traditional government were broken, instead was artificial mechanisms of colonization which were further inefficient in management of edge are introduced.

The traditional system of board of nomadic society, in other words - a basis of steppe democracy gradually fell into historical oblivion. In too time in the Turkestani region this period is noted by existence along with imperial biev court and kaziev court.

Respectively, existence in that political and legal system – judicial authority of imperial Russia created a condition for coordination and coexistence of two systems, - biev court and kaziev court.

Due to the prevalence among the population of Muslims large role played kaziev court, come from the Muslim world and adapted for the local environment. Not less the court biev – as institute of steppe democracy had importance. Both of this institutes existed, complementing each other. It should it should be noted that in comparison with kaziev court, bigger number of affairs were considered by kaziev court. But at the same time the colonizer policy starts yielding the fruits – gradually in biev court the century traditional motive starts disappearing, Bies start turning into the tool of imperial policy.

In the beginning the Turkestani edge consisted only of Syr-Darya and Semirechensk area which gradually as a result of aggressive policy other territories join also. Known Uzbek researcher

Urazayev Sh. Z. emphasizes: “At the beginning the Turkestani edge consisted of Syr-Dariya and Semirechensk areas. After final abolition of the Kokandsky khanate in 1876 its territory under the name of Fergana area was included in structure of Turkestani edge. In 1887 the structure of Turkestani edge included the Samarkand area, and in 1889 – Zakaspiysky area. The main town of Turkestani edge and residence of the governor general determined Tashkent. Tashkent, Semirechenskoy – was the regional center of Syr-Daryinsky area. Right (Almata), Fergana. The new Margelan renamed in 1907 in Skobelev (Fergana), Samarkand – Samarkand and Zakaspiysky area of Ashkhabad (Ashkhabad)”[3]

Actions of imperial Russia in the Turkestani region pursued some aims.

First, through Turkestani edge opened a direct trade way to Iran, Afghanistan, then India, also through this territory it was favorable to establish an economic connection with China. It opened imperial Russia new sales markets.

Secondly, the Turkestani edge was appreciated as agrarian edge. That is there was a calculation of a solution of a problem of demand on agricultural production, made by imperial Russia and respectively allowed to take out from Turkestani agrarian production.

Thirdly the edge was considered, as one of the regions of the empire richest with natural resources. “Turkestani had the richest natural resources for development of productive forces. Environment of edge was favorable for development of a hlopkovodstvo, cattle breeding, beekeeping and other branches of agriculture. Subsoil of edge was rich with minerals. However the richest possibilities of development of economy were used absolutely slightly because of domination of pre-capitalistic relations of productions. Huge massifs of the suitable earth for cultivation remained not sowed. So, by 1909 the sowed area made only 3,9% of all territory of the region, and together with the woods this cultural area reached 23,3%”[4]

Fourthly, imperial Russia sought to ensure safety of the southern territory.

Fifthly, by means of a gain of Turkestani edge imperial Russia sought to influence other territories of central Asia politically.

Sixthly, imperial Russia sought to solve the demographic problem. Excess population moved to these regions. “The imperial government, carrying out colonizer policy in Turkestan, moved to the region “excess” population of Russia. The best lands in Turkestan were occupied by immigrants, and the local population was carried to the worst areas. The tsarism cultivated the race hatred and mistrust

between the people, carrying out in practice the slogan “divide and dominate” [3]

For management of this huge territory the imperial the Russian government carries out various administrative, economic reforms in the region. As a result of a gain the Russia kingdom of many cities of Central Asia in 1867 in the territory of Zhetysuysky and Syr-Daryinsky areas was it is created the Turkestani general governorship. In same the volume is appointed by the first governor general of this edge the general K.P. Kauffman. He was the real nationalist, the officer implicitly executing orders of the tsar. “K.P. Kauffman was the first governor general of Turkestani edge. The choice of the tsar fell on it not incidentally. In the early sixties K.P. Kauffman was the director of office of the Ministry of Defence in Petersburg. Then him appointed the Vilensky governor general. Being in Vilno, it strictly forbade to print to Lithuanian (zhmudsky) books roman type. “Forever to stop the use of Latin letters in zhmujsky language” – he ordered, being the convinced Russifier. In other words, the whole people lost opportunity to read in the native language” [5].

The governor general of Turkestani edge K.P. Kauffman became one of the most faithful servants of the Russian kingdom in Central Asia. He possessed the absolute military and civil power. The Turkestani edge till 1918, i.e. before establishment of the Soviet power was on the martial law and coped special military order.

After a gain of the people of Central Asia, in the won territory the imperial government started establishing the power. In this case the Russian Empire in management of edge relied on the help of local aristocrats. Certainly, their devoted service to the tsar were estimated at high level. “Already during accession on Central Asia to Russia class allies of the imperial authorities came to light. It were many khans, beki, merchants and the other Uzbek, Taji, Kazakh and other exploiters who have handed over to imperial generals of the city and fortress for support in fight against the people, for power preservation, for titles, awards, profits”[5, page 28].

Imperial Russia, relying on the allies in the territory of the region, started carrying out important administrative reforms. In the beginning the Turkestani edge coped on the basis of the “Rules of Management of Turkestani of Edge” project prepared in 1867. Point 6 “Rules of Management of Turkestani edge” literally said the following: “Management of Turkestani edge make: 1) head department; 2) management of separate parts of different departments; 3) local administrative managements; a) regional; b) the district; c) the city; d) the rural; 4) establishment judicial” [5].

The Turkestanian edge coped in a special military order. This mechanism of management was reflected in the 8th point of "Rules". "Management of Turkestanian edge, except for establishment and the persons belonging to judicial, financial and control, educational and post cable to department, are under authority of the Ministry of Defence".

The Turkestanian region the governor general who was appointed and released from a position by the Russian tsar ruled. The governor general was authorized to conduct domestic and foreign policy of edge. He possessed the powerful economic power in the region. The money allocated from the center for the put order, he distributed in own way to a discretion on construction works and projects.

The governor general possessed the Supreme court power and in the field of court. In need of the persons which have violated rules of law, it punished without court. In a consent of the Ministry of Internal Affairs, he was authorized to expel from edge of the locals recognized politically "unpleasant" to 5 years.

At the governor general there were assistants-advisers, officials on special affairs, translators and the staff of officers. The council formed at the governor general on legal status was lower than it. "Council at the governor general was an advisory body and consisted of the military governor of Syr-Daryinsky area, the prosecutor of the Tashkent trial chamber operating state and control chambers, the chief of a staff of the Turkestanian military district and the managing director of office of the governor general. In council work at the governor general at the discretion of the last could participate and other officials. The opinion of council and officials of edge was optional to the governor general" [5].

The structure of local authorities of Turkestanian edge was regulated only in 3 parts of Situation. According to article 43 regional management consisted of the governor and regional military governorship managements. The military governor was appointed by the senate decree in coordination with the Ministry of Internal Affairs and the governor general, on representation of the Ministry of War.

Management of districts of administrative police was headed by the district chief. Managing directors of regional districts were appointed or released by the governor general. Into power of the district managing director were included all possibilities of management of local authorities. The district managing director headed not only bodies of police, but also all other military arrangements.

Control of the cities of Turkestanian edge was exercised like with district management. Regional districts were headed by managing directors, as a last resort local police officers. They were controlled by city public deputies, and also the military governor

and the regional managing director. Among the cities of Turkestanian edge, only Tashkent held special position. Tashkent the chief of the city where large powers were conferred to it operated.

It agreed updated in 1986 "To the provision on board of Turkestanian edge "in nearby regions a control system shared on three parts:

- Settled settlements;
- Nomadic settlements;
- Settlements of the population of not radical nationality.

The control system of local population was carried out in the following order: the local population living in districts shared on the volost, the volost in turn, shared on rural managements. The volost managing director, and rural management – aksakalsky council operated. Council for a period of three years was elected.

The control system of the nomadic population living in this or that district was analog of a local control system. However there was some nuances. The district shared on volosts, and the volost on rural societies. The number of the houses entering rural societies and volosts, had to define regional management. But in the volost this quantity not have to was exceed 2000, and in rural society of 200 hoses. By rules besides houses other objects were considered also. Yurtas, dugouts and usual houses concerned to them. The volost population lodged in places convenient for them. They shared on winter and flight objects.

The third group of the population was not the local population. The system of their management was very similar to the Russian system. This system found reflection in article 116: "each settlement occupied by Russians and persons, not belonging to the native population, forms separate rural society, and with colonization development – is formed gradually volosts of the settlements having mutual among themselves communication. The rights and duties of the rural head, structure areas of jurisdiction and an operations procedure of a rural descent are defined by the rules established for public management of rural inhabitants in the empire. Before formation of volosts the rural administration submits to the District chief" [6]. Administrative reforms of edge found the further stay in judicial reforms. Years formed judicial management which was probably on the Russian system, underwent some changes.

According to "Provisions on management of Turkestanian edge" were formed world and regional courts.

And in 1898 according to changes in Situation instead of regional courts district courts were formed. In maintaining again created courts there were many

questions, according to power at them were very wide. According to Art.141 and 142 they considered cases of the following character:

- Against Christian belief
- Public Affairs
- Against a control system
- Against the public and public service
- Against the resolutions of state and land
- Against the state treasury
- Against public purity
- Against public tranquility and an order
- Against current laws
- Against life, health, freedom and honor
- Crimes against property and an offense

For prevention of indignation local the population except the specified administrative courts national courts were created also. National courts acted on a traditional common law and norms of Sharia [7 p. 14]. But powers of these courts were strongly limited. According to article 211 there were following items: “1) all cases of crimes and offenses made by natives, behind an exception in article 141 and 142, and 2) all affairs civil, arising between the native subordinated to the same national court if these affairs aren’t based on the documents made or testified with the participation of the Russian authorities”.

The control system created by the Russian Empire and the carried out reforms caused embitterment among local population. Besides, the revolutionary movements of 1905-1907 taking place in Russia, didn’t avoid also Turkestan. In the region cases of discontent of local population became frequent.

“Since fall of 1905 of century Tashkent, Samarkand and other cities of Turkestan workers striked, carried out strikes, arranged meetings. In Tashkent the meeting which has ended with demonstrations of the Russian workers which workers of other nationalities, the city poor, representative of petty bourgeoisie and the dekhkena of suburban kishlaks”[5] joined was held on October 15, 1905.

During this period the number of supporters of restriction civil and establishments of the strong military power increases. It is possible to give the statement of the last as an example the general – the governor of Turkestan Kuropatkin: “It isn’t necessary to achieve that us respected and were afraid. Will fall in love afer” [8]. This position was supported also by many Russian officials: “The Russian military power, - wrote one of them, - is more clear and more

impressive for the become silent native crowd, than civil”. [9].

Participation of the Russian Empire in World War I and mobilization of the people of Central Asia for draft work, caused discontent and resistance of the population of Turkestani edge. Disorder of the car of public administration in Russia led to emergence of revolutionary moods in the region.

Establishment in Turkestan the Soviet power, its formation and development was a consequence of revolutionary movements and new trends in Russia [10].

Administratively – the legal and judicial reforms which have been carried out in the region stopped existence of traditional mechanisms to management of the power, destroyed its century foundations, and became a mirage of the Golden age of fair court biev.

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